

SLR:RKH:KMA; 2018V00809

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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TY CLEVINGER,

Plaintiff,

**ANSWER**

-against –

Civil Action No. 18-CV-1568

U.S. DEPARTMENT OF JUSTICE,  
FEDERAL BUREAU OF INVESTIGATION,  
and NATIONAL SECURITY AGENCY,

(Kuntz, J.)  
(Bloom, M.J.)

Defendants.

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Defendants, U.S. DEPARTMENT OF JUSTICE (“DOJ”), FEDERAL BUREAU OF INVESTIGATION (“FBI”), AND NATIONAL SECURITY AGENCY (“NSA”), by and through their attorney, RICHARD P. DONOGHUE, United States Attorney for the Eastern District of New York, KATHLEEN A. MAHONEY, Assistant United States Attorney, of Counsel, upon information and belief, answer the correspondingly numbered paragraphs in the “Original Complaint” (“Complaint”), as follows:

The first unnumbered paragraph in the Complaint sets forth Plaintiff’s characterization of this action, to which no response is necessary. To the extent that that any portion of this section of the Complaint is deemed to contain an allegation of material fact or a response to it is deemed necessary, Defendants deny those allegations.

**Jurisdiction and Venue**

1. This paragraph sets forth conclusions of law to which no response is necessary.

2. This paragraph sets forth conclusions of law to which no response is necessary. To the extent that a response may be deemed necessary, deny knowledge and information sufficient to form a belief as to the allegation concerning where Plaintiff resides.

### **Parties**

3. Deny knowledge and information sufficient to form a belief as to the allegations in this paragraph.

4. Defendant DOJ admits the allegations in the first and third sentences. The allegations in the second sentence set forth conclusions of law to which no response is necessary.

5. With respect to the allegations in the first sentence, Defendant FBI admits that the FBI is a component of the DOJ, which is a federal agency as defined by the Freedom of Information Act (“FOIA”). Defendant FBI denies the allegations in the second sentence, and admits the allegations in the third sentence.

6. Defendant NSA admits the allegations in the first sentence. The allegations in the second sentence set forth conclusions of law to which no response is necessary. With respect to the allegations in the third sentence, Defendant NSA admits that it is headquartered at 9800 Savage Road, Fort George G. Meade, Maryland, and denies the remaining allegations.

### **Statement of Facts**

First 7. Defendants DOJ and FBI admit that they received a FOIA request from Plaintiff dated September 1, 2017, and respectfully refer the Court to Plaintiff’s FOIA request for its accurate and complete contents. Defendant NSA denies knowledge and information sufficient to form a belief as to the truth of the allegations.

Second 7. Defendant DOJ admits the allegations in the first two sentences concerning the exchange of correspondence between the Executive Office for United States Attorneys

(“EOUSA”) and Plaintiff, and respectfully refers the Court to that correspondence for its accurate and complete contents. Defendant DOJ denies the allegations in the third sentence. Defendants FBI and NSA deny knowledge and information sufficient to form a belief as to the truth of the allegations.

8. Defendants DOJ and FBI admit that the FBI sent Plaintiff a letter dated September 19, 2017, deny the remaining allegations, and respectfully refer the Court to the letter for its accurate and complete contents. Defendant NSA denies knowledge and information sufficient to form a belief as to the truth of the allegations.

9. Defendants DOJ and FBI admit that Plaintiff filed an appeal dated September 30, 2017 with the Office of Information Policy (“OIP”) and that the OIP sent Plaintiff a letter dated November 9, 2017 denying Plaintiff’s appeal, deny the remaining allegations, and respectfully refer the Court to Plaintiff’s appeal and the OIP’s response for their accurate and complete contents. Defendant NSA denies knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph.

10. Defendants DOJ and FBI request that this paragraph, which sets forth Plaintiff’s characterizations of a response to a FOIA request and other matters wholly unrelated to the FOIA requests that are the subject of this action and does not comply with Fed. R. Civ. P. 8(a), be struck pursuant to Fed. R. Civ. P. 12(f). Defendant NSA denies knowledge and information sufficient to form a belief as to the truth of the allegations in this paragraph.

11. Defendants request that this paragraphs, which sets forth Plaintiff’s speculation and opinions, be struck pursuant to Fed. R. Civ. P. 12(f). To the extent that a response to this paragraph is deemed necessary, Defendants deny knowledge and information sufficient to form a belief as to the truth of the allegations.

12. Defendants DOJ and FBI deny knowledge and information sufficient to form a belief as to the truth of the allegations. Defendant NSA admits that it received a FOIA request from Plaintiff dated October 10, 2017, and respectfully refers the Court to Plaintiff's FOIA request for its accurate and complete contents.

13. Defendants DOJ and FBI deny knowledge and information sufficient to form a belief as to the truth of the allegations. Defendant NSA admits the allegations in the first sentence, and denies the allegations in the second sentence.

### **Count 1**

#### **(Violation of FOIA, 5 U.S.C. § 552)**

14. Defendants incorporate by reference their responses to ¶¶ 1 through 13 as though set forth in full herein.

15. This paragraph sets forth conclusions of law to which no response is necessary.

### **Request for Relief**

16. This paragraph sets forth Plaintiff's request for relief to which no response is necessary. To the extent that any portion of this paragraph is deemed to contain an allegation of fact or a response is deemed necessary, Defendants deny those allegations.

### **DEFENSES**

1. The Complaint fails to state a claim upon which relief can be granted.
2. The FBI is not an "agency" within the meaning of the FOIA and is not a proper party defendant.
3. There has been no improper withholding of agency records in violation of the Freedom of Information Act, 5 U.S.C. § 552, by the DOJ.

4. There has been no improper withholding of agency records in violation of the Freedom of Information Act, 5 U.S.C. § 552, by the FBI.

5. There has been no improper withholding of agency records in violation of the Freedom of Information Act, 5 U.S.C. § 552, by the NSA.

6. Plaintiff is not entitled to any relief under the Freedom of Information Act, 5 U.S.C. § 552.

WHEREFORE, Defendants respectfully request that judgment be entered dismissing this action and granting such other and further relief as the Court deems just and proper, including Defendant's costs and disbursements.

Dated: Brooklyn, New York  
May 16, 2018

RICHARD P. DONOGHUE  
UNITED STATES ATTORNEY  
Eastern District of New York  
Attorney for Defendant  
271-A Cadman Plaza East, 7<sup>th</sup> Floor  
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By: *s/Kathleen A. Mahoney*  
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TO: Ty Clevenger  
Pro Se Plaintiff  
P.O. Box 20753  
Brooklyn, New York 11202-0752

**DECLARATION OF SERVICE**

Kathleen A. Mahoney hereby declares and states as follows:

That on the 16<sup>th</sup> day of May, 2018, I electronically filed and served by First Class Mail the foregoing

Answer

on

Ty Clevenger  
Pro Se Plaintiff  
P.O. Box 20753  
Brooklyn, New York 11202-0752

Dated: Brooklyn, New York  
May 16, 2018

*s/Kathleen A. Mahoney*  
Kathleen A. Mahoney